

AUG 31 2009

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

09-887

In re **IKO Roofing Shingle**
Products Liability Litigation

MDL Docket No. 2104

**Plaintiffs' Response to Defendant's Motion for Transfer of Actions to the
Northern District of Illinois Pursuant to 28 U.S.C. § 1407 for Coordinated or
Consolidated Pretrial Proceedings**

Pursuant to 28 U.S.C. § 1407 and Rule 7.1(b) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiffs Debra Zanetti, Daniel Trongone, Michael Hight, Michael Augustine, Pamela D. McNeil, James K. Cantwil, Gerald P. Czuba, Curtis Czajka, and Richard Peleckis hereby respectfully join in the request for transfer but allege that transfer should be made to the alternative districts the Western District of New York or the District of New Jersey. In response to the Motion for Transfer and Consolidation of the Actions, Plaintiffs aver the following, as set forth more fully in the accompanying supporting Memorandum:

1. Admit.
2. Deny because Plaintiffs in the New Jersey action have amended their Complaint to name IKO Sales, Ltd. and IKO Industries, Ltd. as defendants after Defendants filed the instant motion.
3. Admit.
4. Admit.



5. Deny to the extent that much of the documentary and testimonial evidence relevant to the common factual issues is located in or near Chicago, and that the Northern District of Illinois is the most geographically central, convenient, and accessible location for all of the parties.

6. Admit.

Plaintiffs make the following additional averments in support of their position that the Western District of New York is the appropriate district in which to consolidate pre-trial proceedings:

7. Upon information and belief, the roofing shingles at issue in the lawsuits were designed and tested in Toronto, Ontario, Canada by Defendant IKO Industries, Ltd.
8. Upon information and belief, much of the evidence relating to the design and testing of the allegedly defective products is located in Toronto, Ontario, Canada.
9. Plaintiffs respectfully request that this Panel grant their request to transfer and consolidate all related actions listed in the Schedule of Actions in the Western District of New York because much of the documentary and testimonial evidence relevant to the factual issues is located nearest to Buffalo, New York, and because it is most convenient and accessible location for most of the parties.

10. This response is supported by the Memorandum simultaneously filed by Plaintiffs, the record, and other matters as may be presented to the Panel during any hearing.

Dated: August 27, 2009

Respectfully submitted,

By: 

Clayton D. Halunen
Christopher D. Jozwiak
Shawn J. Wanta
HALUNEN & ASSOCIATES
1650 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 605-4098
Facsimile: (612) 605-4099

LEVIN, FISHBEIN, SEDRAN & BERMAN
Charles Schaffer
Arnold Levin
510 Walnut Street - Suite 500
Philadelphia, PA 19106-3697
Telephone: 215.592.1500
Facsimile: 215.592.4663

LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
Robert K. Shelquist
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: 612.339.6900
Facsimile: 612.339.0981

*

*

*

CUNEO GILBERT & LADUCA, LLP

Charles J. LaDuca

Brendan Thompson

507 C Street NE

Washington, D.C. 20002

Telephone: 202.789.3960

Facsimile: 202.789.1813

AUDET & PARTNERS, LLP

Michael A. McShane

221 Main Street, Suite 1460

San Francisco, CA 94105

Telephone: 415.568.2555

Facsimile: 415.576.1776

ATTORNEYS FOR PLAINTIFFS

DEBRA ZANETTI, DANIEL

TRONGONE, MICHAEL HIGHT,

MICHAEL AUGUSTINE, PAMELA D.

MCNEIL, JAMES K. CANTWIL,

GERALD P. CZUBA, CURTIS CZAJKA,

AND RICHARD PELECKIS

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re IKO Roofing Shingle Products Liability Litigation	MDL Docket No. 2104
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Plaintiffs' Memorandum in Support of Its Response Joining in the Request for Consolidation But Seeking Transfer to the Western District of New York or the District of New Jersey for Consolidated Pretrial Proceedings

All Plaintiffs listed in the Schedule of Actions filed by Defendants hereby jointly submit this memorandum of law in support of their response to Defendants' motion for transfer. Plaintiffs and movants agree that consolidation of the related actions is appropriate because it will eliminate duplicative discovery, conserve judicial resources, eliminate the risk of competing classes or conflicting rulings, and conserve the resources of the parties and their counsel. The Western District of New York (the "District") is the most appropriate district in which to consolidate the actions because it is located near much of the evidence, most of the parties reside in or near the District, the District does not currently have any consolidated actions pending in it, the Honorable William M. Skretny is experienced in managing complex litigation and currently has no MDLs assigned to him, and the District is convenient and accessible for the parties and their counsel.

BACKGROUND

Four related actions are currently pending that Plaintiffs agree should be consolidated for pre-trial proceedings: *Czuba et al. v. IKO Manufacturing Inc. et al.*, Civil No. 09-CV—0409 (W.D.N.Y. filed Apr. 29, 2009) (pending before Judge William M. Skretny) (“the New York action”); *Zanetti et al. v. IKO Manufacturing Inc. et al.*, Civil No. 2:09-CV-2017 (D.N.J. filed Apr. 29, 2009) (pending before Senior Judge Dickinson R. Debevoise) (“the New Jersey action”); *McNeil et al. v. IKO Manufacturing et al.*, Civil No. 1:09-CV-04443 (N.D. Ill. filed July 24, 2009) (pending before Judge Samuel Der-Yeghiayan) (“the Illinois Action”); and *Hight et al. v. IKO Manufacturing Inc. et al.*, Civil No. 2:09-CV-00887-RSM (W.D. Wash. filed June 26, 2009) (pending before Judge Ricardo S. Martinez) (“the Washington Action”). Plaintiffs in the actions own or have owned structures on which allegedly defective IKO roofing shingles were installed and who have subsequently suffered damages as a result of incorporating the defective shingles into their structures.

Plaintiffs in each action seek to certify classes of similarly situated individuals who have incurred damages as a result of incorporating IKO shingles into their homes or other structures. IKO roofing shingles are inherently defective because they degrade before the end of their promised usable lifespan, they cause damage to the substrates to which they are attached and to other parts of the structure, they release chemicals, they no longer meet rating standards for third-party testing facilities as they age, and they decrease the market value of the property. The defect is latent and existed in the

products at the time of installation regardless of the way the product was installed. Plaintiffs allege that the defendants knew about the defect but, nonetheless, refused to honor their express and implied warranties. IKO roofing shingles are designed at the company's headquarters in Toronto, Ontario, and sold and installed throughout the United States and worldwide.

Each of the four complaints alleges substantially similar legal theories of negligence, breach of contract, breach of express warranties, breach of implied warranties, products liability, fraudulent inducement, and state consumer fraud statutes. Plaintiffs seek monetary damages, injunctive relief, and assignment of costs. No defendant has filed an answer or otherwise responded to any action. While discovery has not yet begun, and there have been only limited pretrial activities.¹ Several scheduling conferences will be held in September of this year.

The Western District of New York, the forum of the New York action is the most appropriate district for consolidated pretrial proceedings. The Western District of New York is the center of gravity for the IKO roofing shingles litigation because it is nearest to the defendants' headquarters and it is closest to a majority of the parties.²

¹ Pretrial activities have been limited to pro hac vice admissions, unopposed motions to extend time to Answer or otherwise respond, and an unopposed motion for leave to amend the complaint. Additionally, at the request of defendants and as an accommodation to defense counsel, the Illinois case was transferred to the Northern District of Illinois where the defense counsel was located from the Central District of Illinois

² Buffalo, NY is approximately 100 miles from Toronto, Ontario.

The Western District of New York is convenient for most of the parties and their counsel, and the judge to whom the New York case is assigned is experienced in managing litigation and, currently, has no other MDL proceeding assigned to him.

THE PANEL SHOULD TRANSFER THE CASES TO THE WESTERN DISTRICT OF NEW YORK

The Western District of New York is Nearest to Much of the Evidence

The Western District of New York is the Center of Gravity in this litigation. The transferee court's proximity to the evidence, parties, and witnesses is an important factor in selecting a transferee court. *See, e.g. In re Dow Chemical Co. Sarabond Products Liability Litigation*, 650 F. Supp. 187, 189 (J.P.M.L. 1986); *In re Upjohn Co. Antibiotic "Cleocin" Products Liability Litigation*, 450 F. Supp. 1168 (J.P.M.L. 1978). The Defendants are all closely related business entities operating under central control. Plaintiffs understand that many of the executives or decision-makers of the various business entities are related. Toronto, Ontario is the center of operations for the IKO businesses, and much of the evidence that is essential to these lawsuits is located there. Important discovery sources are located in the Defendant's worldwide headquarters near Buffalo, New York. Buffalo, New York is the center of gravity for the IKO roofing shingles lawsuits because:

1. most of the plaintiffs live in or very near the eastern seaboard;
2. Defendants engineer roofing shingles near Buffalo, New York;
3. Defendants operate a research laboratory near Buffalo, New York;

4. Defendants conduct reliability engineering and testing near Buffalo, New York;
5. Defendants employ technical analysts near Buffalo, New York;
6. patents relating to the roofing shingles are held by Defendant IKO Industries, Ltd. near Buffalo, New York;
7. Defendants manufacture shingles near Buffalo, New York;
8. Defendants employ Quality Assurance Coordinators near Buffalo, New York; and
9. many of the homes or other structures at issue in the lawsuits are located in or near Buffalo or the State of New York.

The stated facts indicate that Toronto, Ontario is the territorial center of Defendants' operations. This too is located near Buffalo so that extra-territorial discovery can be coordinated through or the motion practice related to securing evidence for this MDL can be conveniently coordinated. It is Plaintiffs' Counsels' experience with manufacturing claims that not all records covering the time periods at issue are stored electronically. If an agreement cannot be reached on document imaging, the physical review of paper will likely take place at or near Buffalo, New York. Additionally, Plaintiffs' Counsel expect to conduct a substantial number of depositions in Buffalo, New York or Toronto, Ontario. The new state-of-the-art federal courthouse in Buffalo, New York is close to IKO's world headquarters.³ *See e.g. In re Baycol Products Liability Litigation*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) (consolidating litigation to the District of Minnesota, in part, because the courthouse

³ The new federal court house in Buffalo, NY is 268,000 square feet, the most expensive construction project ever conducted in Western New York, and is scheduled to open in late 2009 or early 2010.

was modern and outfitted with the necessary technology). Accordingly, the Western District of New York is the most appropriate district in which to consolidate pretrial litigation.

The Western District of New York is Convenient and Accessible

Buffalo, New York is convenient for all parties involved in the litigation. Most of the evidence relevant to the litigation will be on or near the east coast of the United States. Buffalo is a metropolitan city with an international airport that is serviced by approximately 110 daily flights.⁴ Flying times to Buffalo from major cities in the United States are generally less than two hours.⁵

More than half of the plaintiffs in the IKO lawsuits own or owned structures in New York or New Jersey. All three of the United States-based defendants are incorporated on the East Coast, and one of the remaining two defendants is located less than 100 miles from New York. None of the plaintiffs live west of Michigan, and only one of the defendants has operations west of Illinois. Because most of the parties, witnesses, and evidence are located in or near Buffalo, New York, the Western District of New York is the most convenient and accessible district available.

⁴ Buffalo Convention and Visitors Bureau, <http://www.visitbuffaloniagara.com/visitors/maps/default.asp#airport> (last visited August 24, 2009).

⁵ Flying times, as reported by the Buffalo Niagara Convention and Visitors Bureau, are: Chicago, 80 minutes; Minneapolis, 90 minutes; New York, 1 hour; Boston 80 minutes; Philadelphia, 1 hour; Pittsburgh, 1 hour; and Washington, D.C., 1 hour.

The Western District of New York is Well-Suited to Handle this Litigation

One of the four lawsuits is currently pending in the Western District of New York. Judge William M. Skretny is presiding over the New York litigation. Judge Skretny has been a United States District Judge since 1990. He is the author of 760 opinions, including 203 published decisions and orders. The total number of cases on his career docket is 4,678. More than 333 of these have been torts or negligence cases, and more than 345 have been commercial law and contract cases. Judge Skretny is experienced in managing complex cases with the same or similar subject matter that is at issue here. Plaintiffs submit that Judge Skretny is particularly well-qualified to manage the pre-trial proceedings in the IKO roofing shingles litigation.

As of July 8, 2009, no multidistrict litigation was pending before any judge of the Western District of New York. Administrative Office of the Judicial Panel for Multidistrict Litigation, Distribution of Pending MDL Dockets as of July 8, 2009, http://www.jpml.uscourts.gov/Docket_Information/PendingMDL-July-09.pdf (last accessed August 26, 2009). A forum is efficient where it has fewer multidistrict litigation than any of the other suggested transferee districts. *In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 932 (J.P.M.L. 1980). Because there is currently no multidistrict litigation pending in the Western District of New York, the district will be able to efficiently manage the litigation.

The Western District of New York is the most appropriate district in which to consolidate the IKO roofing shingles litigation because it is the center of gravity for

the case in that much of the evidence relevant to the primary issues is located nearest to Buffalo, New York. Additionally, the district is convenient for most of the parties and is easily accessible. Consolidation of pretrial proceedings in the Western District of New York will increase judicial efficiency, eliminate duplicative discovery, conserve judicial resources, avoid the risk of competing classes or conflicting ruling, and conserve the resources of the parties and their counsel.

THE DISTRICT OF NEW JERSEY IS ALSO AN APPROPRIATE DISTRICT IN WHICH TO CONSOLIDATE PRETRIAL LITIGATION

One of the other lawsuits in the IKO roofing shingles litigation is pending in the District of New Jersey. The New Jersey lawsuit is assigned to Senior Judge Dickinson R. Debevoise. New Jersey is a district that is exceptionally capable of efficiently processing consolidated cases, and Judge Debevoise has considerable experience handling such matters. *See Administrative Office of the Judicial Panel on Multidistrict Litigation, Distribution of Pending MDL Dockets as of July 8, 2009*, http://www.jpml.uscourts.gov/Docket_Information/PendingMDL-July-09.pdf (last accessed August 25, 2009) (stating that New Jersey is currently host to 24 consolidated cases and Judge Debevoise is assigned to two of them). Additionally, New Jersey is located near many of the plaintiffs,⁶ and between the company's Toronto headquarters and the place of incorporation of the company's three United States subsidiaries. *See In re Gen. Motors Corp. Dex-Cool Prods. Liab. Litig.*, 293 F. Supp. 2d 1381, 1382

⁶ Five of the nine plaintiffs own or owned structures in New Jersey or New York.

(J.P.M.L. 2003) (the transferee district was centrally located in relation to the parties).

If this Panel finds that the Western District of New York is not appropriate for consolidated pretrial proceedings, then it should consolidate the litigation in the District of New Jersey.

THE NORTHERN DISTRICT OF ILLINOIS IS NOT THE MOST APPROPRIATE TRANSFEREE DISTRICT

The group of defendants that initially moved this Panel to consolidate the cases is comprised of three of the five closely held corporations owned by one family located in Toronto, Ontario. The three movants are the United States subsidiaries of IKO. The movants base their forum decision on the premise that at one time, some of IKO's United States operations were conducted near Chicago.⁷ However, as the movants admit in their papers, most of the company's operations are no longer conducted near Chicago. Indeed, the company has closed all of its Chicago offices. What is more, there is no indication that any witnesses or documents would still be located there. Although the company's warranty decisions are made somewhere in Illinois, the primary issue at trial will be how IKO's roofing shingles are defective, not whether or not warranty claims were handled. Information relevant to that issue is most likely located in the place where the shingles are designed and engineered—that is near Buffalo, New York. The Northern District of Illinois is home to only one of five defendants, and it is over 400 miles away from the Defendants' center of

⁷ Defendants' Chicago facility is now a boarded up abandoned building where clearly no corporate activity takes place.

operations. For the foregoing reasons, Buffalo, not Chicago, is the center of gravity for the IKO shingles litigation. Because most of the evidence and witnesses are located nearest to Buffalo, the Western District of New York is the most appropriate district in which to consolidate the lawsuits for pre-trial proceedings.

In contrast to a boarded up facility, four of the fourteen parties are from New York, and three other parties are from a neighboring state or province. Additionally, the Northern District of Illinois is currently managing twenty-three consolidated cases, and the judge to whom the Illinois litigation is currently assigned has limited experience in managing complex litigation. *See* Distribution of Pending MDL Dockets as of July 8, 2009, *supra*; The Chicago Council of Lawyers, An Evaluation of the United States District Court Judges in Chicago 1 (2006) (attached hereto as Exhibit A). Because there is no multidistrict litigation in the Western District of New York at this time, the district is an efficient transferee district. Defendants' arguments in favor of consolidation in Chicago, Illinois fail because the company no longer conducts any substantive and related business in that area, there is no indication that evidence relevant to the primary issue of the litigation is in Chicago. Accordingly, consolidation in the Northern District of Illinois is inappropriate.

CONCLUSION

For the foregoing reasons and in light of the similar allegations regarding the defendants' conduct, the likelihood of overlapping discovery and the potential for conflicting pretrial rulings, Respondents respectfully request that this Panel order that

the related actions be consolidated and that the consolidated action be transferred to the United States District Court for the Western District of New York or, in the alternative, to the District of New Jersey pursuant to 28 U.S.C § 1407, and that all related individual or class actions be transferred thereto as tag-along actions.

Dated: August 27, 2009

Respectfully submitted,

By: 

Clayton D. Halunen
Christopher D. Jozwiak
Shawn J. Wanta
HALUNEN & ASSOCIATES
1650 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 605-4098
Facsimile: (612) 605-4099

LEVIN, FISHBEIN, SEDRAN & BERMAN
Charles Schaffer
Arnold Levin
510 Walnut Street - Suite 500
Philadelphia, PA 19106-3697
Telephone: 215.592.1500
Facsimile: 215.592.4663

LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
Robert K. Shelquist
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: 612.339.6900
Facsimile: 612.339.0981

CUNEO GILBERT & LADUCA, LLP

Charles J. LaDuca

Brendan Thompson

507 C Street NE

Washington, D.C. 20002

Telephone: 202.789.3960

Facsimile: 202.789.1813

AUDET & PARTNERS, LLP

Michael A. McShane

221 Main Street, Suite 1460

San Francisco, CA 94105

Telephone: 415.568.2555

Facsimile: 415.576.1776

ATTORNEYS FOR PLAINTIFFS

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MCNEIL, JAMES K. CANTWIL,

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re IKO Roofing Shingle Products Liability Litigation	MDL Docket No. 2104
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EXHIBIT A

An Evaluation of the United States District Court Judges in Chicago¹

by
The Chicago Council of Lawyers

I. Introduction.

The Chicago Council of Lawyers is a public interest bar association which has been dedicated to bringing about an exemplary legal system for over 30 years. Periodically throughout its history, the Council has evaluated federal judges who sit in Chicago. These past evaluations include an evaluation of the judges sitting on the U.S. Court of Appeals for the Seventh Circuit (1994), evaluations of the U.S. District Court Judges sitting in Chicago (1972, 1976, and 1991), and an evaluation of the U.S. Bankruptcy Judges sitting in Chicago (1992). The Council has also periodically evaluated various candidates for the federal bench.

The Council's federal judicial evaluations are motivated by a desire to improve the quality of justice in Chicago by providing honest feedback to the judges themselves and to the public officials who will be making future judicial selections. Federal district judges hold positions of great power. Although the decisions of a federal district judge are subject to review by a higher court, in reality, the vast majority of a district judge's actions are never reviewed by a higher court, and are only rarely seen or discussed by the press or public at large. Indeed, in 2004, no judge included in this evaluation had more than 20 of his/her cases decided on the merits by the U.S. Court of Appeals for the Seventh Circuit.² Moreover, because of the respect and deference accorded their positions, honest, informal feedback also can be a rarity.

This evaluation reflects the candid views of the active federal court lawyers in Chicago. In conducting the evaluation, the Council created a non-partisan, non-ideological process designed to accurately capture the bar's views and present them in a synthesized, readable format. While this evaluation is no doubt imperfect, it is the product of over a year's work by a group of more than 50 lawyers, and incorporates views expressed by over 1000 active federal court lawyers in Chicago.

¹ There are presently 33 United States district judges in the United States District Court for the Northern District of Illinois, of whom 11 are on "senior" status. Only the non-senior judges were included in this evaluation. Judge Philip G. Reinhard, who sits in Rockford, Illinois, rather than Chicago, was also excluded from this evaluation, as was Judge Virginia M. Kendall, who joined the bench too recently to be included in this evaluation.

² This observation is based on publicly available information on WESTLAW reviewed by the Council as part of this evaluation.

II. Methodology.

The evaluation process began with the Council's formation of a Federal Judicial Evaluation Committee which, in turn, created a multi-faceted evaluation process with a variety of built-in checks and balances.³

The Written Survey

In the Summer of 2005, the Clerk's Office of the U.S. District Court for the Northern District of Illinois provided the Council with the names and addresses of approximately 4000 randomly selected members of the Federal Trial Bar for this District (i.e., approximately one third of the members). The Council played no role in the selection of these names. After verifying and updating these addresses, and eliminating attorneys without a Chicago-area address, the Council was left with a sample of 3,250 lawyers. In supplementation of this list of randomly selected lawyers, the Council added all Assistant United States Attorneys in the Chicago office (approximately 125 in total) and all staff lawyers practicing with the Federal Defender's Office in Chicago (approximately 30 in total). These persons were added because federal prosecutors and criminal defense lawyers are a constant presence before the judges in this evaluation.

The Council also developed a 30-question written survey, which was based on the survey used by the Council in its three previous evaluations of the federal District Judges in Chicago. The written survey (a blank copy of which, along with the cover letter containing instructions on how to complete the survey, is attached as Exhibit 2 hereto) contains a series of questions about the respondent's level of federal court experience and then asks specific questions about each judge's legal ability, integrity, temperament, decisiveness, and diligence. Finally, as a means of eliciting an overall assessment for each judge, the respondent was asked whether the judge is a good District Judge and whether he or she would make a good Court of Appeals judge. The survey ends with a series of demographic questions which allowed us to know the type of lawyers answering the questionnaire. Respondents were informed that their responses would be used in the aggregate and that their responses would be anonymous. The written survey does not ask for the respondent to provide his or her identity, and in fact, the Council has no way of matching a given written survey response with a particular respondent. Respondents were instructed to limit their input to only their direct, personal experience with each judge within the past five years and were further instructed not to base their answers on the opinions of other lawyers which they may have heard.

The written surveys were mailed out in the Summer of 2005, and a total of 302 lawyers completed and returned the written survey. Through the survey (the results of which are attached hereto as Exhibit 1), we received at least 80 responses for most judges (the judges who have been on the bench for fewer than three years received fewer responses). According to the

³ The Committee was co-chaired by Michael W. Early (Chicago Underwriters Group, Inc.) and Peter A. Steinmeyer (Epstein Becker & Green, P.C.). Committee Members included Malcolm Rich (the Executive Director of the Chicago Council of Lawyers), Armando Carlo III (Boeing Corporation), Patricia Bronte (Jenner & Block), Adam Goodman (Lovells), Aphrodite Kokolis (Schiff Hardin), Karen L. Levine (Novack and Macey), Gregory Mayer (Marshall Gerstein & Borun), David E. Schoenfeld (Grippio & Elden), and Charles Sklarsky (Jenner & Block).

demographic information provided by the survey respondents, 14 survey respondents are prosecutors, 34 do at least some criminal defense, and the rest are civil litigators.

Personal interviews

The Council supplemented the written survey with personal interviews conducted by a panel of volunteer lawyers (generally, two different interviewers per judge, each of whom had federal court experience). The list of lawyers to be interviewed was generated by printing out published opinions issued between 2003 and 2005 by the federal judges being reviewed. Investigators were instructed to call lawyers on each side of those published decisions. The investigators were supervised by the Council's Federal Judicial Evaluation Committee and its Executive Director.

Each investigator was provided a sample script (Exhibit 3) with specific questions to be asked of each respondent. Investigators had the opportunity to ask additional questions, as well. The general categories of questions were: Legal Ability, Quality of Written Opinions, Decisiveness, Diligence, Integrity, Judicial Temperament, Fairness, Respect for the Rule of Law, and Independence from Political and Institutional Influences. All responses were used anonymously.

Each investigation of a given judge involved at least 40 interviews of lawyers having direct experience before that federal judge. In total, more than 800 lawyers were interviewed.

Finally, after this evaluation was reviewed and approved by the entire Board of the Council, a draft of the evaluation was provided to each judge included in the evaluation. Each judge was given two weeks in which to review and comment on his/her draft evaluation, and the Council also offered to meet in person with Chief Judge Kocoras or any other judge who wanted to discuss his/her respective evaluation.

III. A Note Regarding The Effect Of Ideology On The Evaluation's Results.

In formulating the evaluation process, and in evaluating the input received from active federal court practitioners in Chicago, the Council undertook every reasonable effort to strip the process of any partisanship or ideology. In that regard, the process succeeded, for the results bear little if any correlation to a given judge's reputed ideological leanings, or to the party affiliation of the President by whom they were nominated. Quite simply, there are highly-regarded judges of all political persuasions in this district, as well as judges of all persuasions whose performance is not held in such high regard.

IV. Specific Results.

The specific results for each of the 20 federal district court judges included in this evaluation are set forth below.

Judge Wayne R. Andersen

Judge Andersen, born in 1945, was appointed to the U.S. District Court by President George H. W. Bush in 1991. He graduated from the University of Illinois College of Law in 1970. From 1970 to 1972, he served as Administrative Assistant to Henry J. Hyde, the then Majority Leader of the Illinois House of Representatives. He was in private practice, first as an associate and then as a partner, with the Chicago law firm Burditt & Calkins from 1972 to 1980. From 1981 to 1984, Judge Andersen served as deputy to then Illinois Secretary of State Jim Edgar. From 1984 to 1991, he served as a Circuit Judge in Cook County where, from 1989 to 1991, he served as Supervising Judge for the Traffic Division of the First Municipal District.

By most accounts Judge Andersen is a dedicated, fair and impartial judge. His calm judicial temperament and courteous attitude toward both lawyers and litigants are a hallmark of his courtroom. Several lawyers commented that, especially with *pro se* litigants, he goes out of his way to ensure that people in his courtroom understand the judicial process and are given their day in court. He is described as non-ideological, having high integrity, unbiased and free from political leanings. He shows a keen interest in cases and issues, and is concerned about the real life impact of his decisions on the litigants.

Judge Andersen receives high marks for his courtesy and temperament. In the written survey results, lawyers strongly reported that he is courteous towards lawyers and litigants (see question no. 8). Surveyed lawyers also reported that Judge Andersen gives due consideration to the convenience of lawyers and litigants in scheduling proceedings (see question no. 10).

One consistent comment about Judge Andersen, however, is that he is not particularly decisive in rulings. Some lawyers complain that he is too lenient and permissive with lawyers and litigants and does not push attorneys on deadlines in his cases. Additionally, a few lawyers reported that Judge Andersen's own view of the "right outcome" of the case seemed to color his handling of some cases.

In the Council's written survey, Judge Andersen had one significant statistical anomaly among his otherwise excellent ratings. Specifically, Judge Andersen received the lowest score of any judge on the question about whether he refrains from *ex parte* communications. His score was substantially lower than the next lowest judge. The Council encourages Judge Andersen to reconsider whatever practices may be leading to such poor marks in that category.

Overall, Judge Andersen is highly regarded by the active federal bar, and is seen as a smart, fair, and courteous judge who is concerned with ensuring that all litigants have an opportunity to be heard. He is highly praised for his temperament and has good courtroom management skills.

Judge Elaine E. Bucklo

Judge Bucklo, born in 1944, was appointed to the U.S. District Court in 1994 by President Clinton. She graduated from Northwestern University Law School in 1972. After a Seventh Circuit Court of Appeals clerkship with the Honorable Robert A. Sprecher, she

practiced law with two Chicago law firms (Miller, Shakman, Hamilton & Kurtzen from 1974 to 1980⁴ and Coin, Crowley & Nord from 1980 to 1983) and then as a solo practitioner, until she became a United State Magistrate Judge in 1985. Judge Bucklo served as a United States Magistrate Judge for nine years until she became a District Court Judge in 1994.

A majority of lawyers interviewed praised Judge Bucklo's legal ability, work ethic and fairness. Other lawyers described Judge Bucklo as being decisive, well-prepared and professional in her demeanor. While most lawyers praised her abilities as a judge and generally reported having positive experiences when she presided over their cases, a vocal minority of lawyers interviewed had negative comments about Judge Bucklo's lack of decisiveness during trials and her judicial temperament. In addition, a few lawyers raised concerns about perceptions of possible bias depending on the parties involved in the case.

Lawyers interviewed commented that Judge Bucklo remained open-minded and persuadable even after coming to an initial conclusion on a matter of law. Many of those lawyers said that Judge Bucklo tended to get issues right in the end.

Some lawyers interviewed commented that Judge Bucklo can be hesitant to make evidentiary rulings from the bench. In addition, some lawyers reported that Judge Bucklo can waver with respect to pre-trial rulings. In the Council's written survey, Judge Bucklo received the lowest score of any judge on the question about whether she rules with appropriate decisiveness during trial (question no. 22). Some lawyers interviewed by the Council raised concerns that these issues could cause problems in conducting an efficient trial in front of Judge Bucklo.

The active federal bar generally thought that Judge Bucklo has high integrity and is impartial. A few lawyers, however, did express concerns that they perceive Judge Bucklo to be "pro-employee" or "pro-plaintiff" in some civil cases. Judge Bucklo scored worse than average in the written survey about whether she refrains from prejudging the outcome of a case during pretrial or early trial proceedings (question no. 11).

Criminal defense practitioners praised her as showing no bias and for being a smart, hard-working judge. However, other lawyers practicing criminal law before Judge Bucklo commented that she appeared more unsure of herself in criminal law matters than in civil law matters. In the written survey, lawyers gave Judge Bucklo a substantially worse than average score on the question about whether her rulings in criminal cases are free from any disposition to decide for either government or defense (question no. 4).

The results of the evaluation were inconsistent as to Judge Bucklo's judicial temperament. Some lawyers commented on Judge Bucklo's pleasant and courteous demeanor, while other lawyers commented that she could be impatient, erratic or discourteous from the bench. In the written survey, Judge Bucklo received the second lowest score on the question as to whether she is attentive to arguments and testimony (question no. 19).

⁴ Judge Bucklo was President of the Council from 1977-1978.

On the whole, Judge Bucklo received mixed reviews from the active federal trial bar. Most lawyers viewed her as a hard-working, capable judge who remains open-minded in an effort to get it right, but others noted that she has room for improvement in some important areas of her performance.

After reviewing a draft of the Council's evaluation, Judge Bucklo offered the following comment:

Thank you for the Council's evaluation. It is useful to obtain lawyer feedback. As you note, some lawyers in your survey expressed reservations regarding my trial and motion practices. For several years I have followed several procedures used by colleagues in some other jurisdictions that I have believed promote trial efficiency. One is to defer ruling on objections that need to be heard outside the presence of the jury until breaks or after the jury has left. I believe that saves time; in almost all cases trials finish in less time than predicted. But obviously some lawyers have felt frustrated by the practice. It has also been my practice not to have status hearings in most cases and to set motions for a single day. It is apparent that lawyers want more of an opportunity to talk to the judge and on reflection, I understand the drawbacks to this practice, which I have changed. It has not been my intention to be inaccessible and obviously not to appear indecisive. It is also true that hearing too many things on one day sometimes results in less patience with arguments.

Judge Ruben Castillo

Judge Castillo, born in 1954, is a 1979 graduate of the Northwestern University School of Law. He was appointed to the federal district court in 1994 by President Clinton. He was admitted to the bar in 1979 and was in private practice with Jenner & Block from 1979 to 1984. He served as an Assistant United States Attorney from 1984 to 1988 and was Regional Counsel with the Mexican American Legal Defense and Education Fund from 1988 to 1991.⁵ He was with Kirkland & Ellis from 1991 until his appointment to the bench.

Attorneys report generally that Judge Castillo has excellent legal ability, with a good command of the law and controlling legal principles in each case before him. He administers his cases effectively and is well prepared when he takes the bench. Judge Castillo's written work also receives praise. His opinions are described as timely, well-researched, and well written. His integrity is unquestioned.

Judge Castillo was often described as being decisive – a judge who makes a decision and sticks with it, but who is willing on occasion to revisit a legal or factual question if appropriate to the circumstances.

Judge Castillo pushes attorneys to settle their cases or to agree to have the matter transferred by consent to a magistrate judge, and therefore off his docket. He sets short deadlines on discovery and motion practice, and according to respondents, "comes down hard" on lawyers

⁵ Judge Castillo was a member of the Council's Board of Governors from 1988-1992, and was Vice President of the Council from 1991-1993.

who do not adhere to the deadlines. The results of the Council's written survey reflected this concern among lawyers. On question 10, "He/she gives due consideration to the convenience of lawyers and litigants in scheduling proceedings," Judge Castillo did substantially worse among respondents than the average score for all the judges. However, most of those interviewed indicated that he "rides everyone pretty hard" and that he applies pressure equally to both sides, not favoring one or the other in managing the tight deadlines. Lawyers see this situation differently. Some see this as setting realistic expectations. Others see it as forgetting the "numerous competing demands of being a practicing attorney."

Judge Castillo also received mixed reviews regarding his role in settling cases. Lawyers report generally that he strongly encourages parties to settle. While many of those interviewed did not feel that this encouragement jeopardized the fair resolution of the case, the results of the Council's written survey did reflect a concern. On question 13, "He/she refrains from coercing settlements," Judge Castillo received the lowest score of any judge.

A primary and repeated criticism of Judge Castillo was that he is often "abrupt," "brusque," and "impatient" with counsel. However, while no one praised his abrupt demeanor, some respondents did say that he dishes it out equally to both sides.

Overall, respondents to the survey and to our interviews praise Judge Castillo for his ability, for his being well-prepared, for the quality of his written work, and for his decision-making. There are concerns, however, about the way he relates to the lawyers before him, both in terms of his setting of deadlines and in his general demeanor, and regarding his handling of settlements.

Judge David H. Coar

David H. Coar, born in 1943, is a 1969 graduate of the Loyola University Law School. He received an L.L.M. degree from Harvard Law School in 1970. After one year with the NAACP Legal Defense and Educational Fund and three years in private practice in Alabama, he spent five years as an associate professor at DePaul University College of Law teaching Ethics, Corporations, Corporate Finance and other courses. From 1979 to 1982, he served as the United States Bankruptcy Trustee in the Northern District of Illinois. He taught at DePaul again from 1982 to 1986, where he was Associate Dean for Academic Affairs from 1982 to 1985. He was appointed to the Bankruptcy Court in 1986, where he served until his appointment to the District Court in 1994 by President Clinton.

Judge Coar is generally regarded as a capable, fair and decisive judge. Some attorneys express concerns regarding his courtroom demeanor and, in a few instances, with the quality and timeliness of his decisions.

Most attorneys surveyed rate Judge Coar's legal ability highly and consider his written opinions to be well-founded, clear and timely. In comparison to his fellow judges in the Northern District of Illinois, survey respondents rated Judge Coar above average both in terms of the clarity of his written rulings and the promptness with which he rules on substantive motions. Nevertheless, in the Council's telephone interviews, a few attorneys complained about the clarity of Judge Coar's opinions, and some reported waiting eight months or more for written opinions.

Attorneys praise Judge Coar's work ethic, impartiality and punctuality on the bench. Judge Coar's integrity and independence are unquestioned. Judge Coar communicates clearly in his courtroom, makes well-reasoned decisions, and then sticks to them. He treats *pro se* litigants fairly and respectfully, explaining procedures to them clearly and patiently, and then requiring reasonable compliance.

Judge Coar's judicial demeanor, however, drew criticism from attorneys in both interviews and survey responses. Indeed, respondents to the Council's written survey rated Judge Coar substantially below average with respect to courtesy toward lawyers and giving due consideration to the convenience of lawyers and litigants. In chambers and in trial, he is unfailingly pleasant and courteous. Nevertheless, many attorneys observe an entirely different demeanor in pre-trial court appearances. Some describe Judge Coar in this setting as "no-nonsense" and stern. Others find him abrasive, demeaning and intemperate. In addition, Judge Coar sets very tight pre-trial schedules and does not extend them readily. Some attorneys view this practice as counter-productive, believing it causes unnecessary discovery motion practice and unpreparedness which, in turn, seem to trigger the intemperance noted above.

Attorneys appearing before Judge Coar should expect a tightly-run courtroom and should be prepared, know the rules generally and Judge Coar's standing order in particular, and prepare their cases promptly.

Apart from the criticisms of his temperament, Judge Coar is well regarded by the active federal bar.

Judge John W. Darrah

John W. Darrah, born in 1938, is a 1969 graduate of Loyola University School of Law. He was appointed to the federal bench in 2000 by President Clinton after serving since 1986 as a DuPage County Circuit Court Judge in Wheaton, Illinois. He began his legal career at the Federal Trade Commission, worked as a part-time public defender in DuPage County, and then worked in the State's Attorney's office in DuPage County. He also served as the Public Administrator and Public Guardian in DuPage County. In private practice he worked both as a partner in law firms and as a solo practitioner in the western suburbs of Chicago.

Judge Darrah is generally regarded as fair, independent and a good case manager. Some attorneys express concerns regarding his temperament on the bench and lack of interest in intellectual issues presented in his cases. On average, lawyers surveyed mildly agree that overall Judge Darrah is a good District Judge, but he is generally not considered an outstanding judge.

Lawyers interviewed about Judge Darrah reported that he is decisive and praised him for "moving his cases along," being "punctual," and for not leaving motions pending undecided for lengthy periods. He is said to expend substantial time and energy keeping on top of his cases and moving them along toward resolution. Some lawyers, however, expressed concern that he can sometimes be too strict with his case management deadlines; an example cited was his unwillingness to move deadlines for filing summary judgment motions even when the dates for the close of discovery are extended. This unwillingness can place litigants in unnecessary and unfair situations.

No one interviewed criticized Judge Darrah's integrity in any respect. He is viewed as fair and impartial. Lawyers report that Judge Darrah shows no favoritism or bias. He appears to decide issues on the merits, rather than with regard to the parties who presented the questions.

Judge Darrah was, however, criticized for his judicial temperament; many believe this is his greatest weakness and a few lawyers interviewed view his temperament issues as a serious problem. Lawyers report that Judge Darrah has the capacity to be charming, friendly and accommodating but with some frequency he is said to abruptly become overbearing, belittling and abusive of the counsel before him. Some observe that Judge Darrah seems to become angry and abusive when a lawyer disagrees with him; others say that he has a tendency to lose his temper when something new and unexpected arises for which he has not prepared. Judge Darrah is said to not hold a grudge in that once he has lashed out at a lawyer he can be perfectly pleasant the next time that lawyer appears before him.

He is said to have a great deal of respect for the rule of law. Judge Darrah follows the law as he understands it and does not base decisions on his personal views. Some lawyers say he follows appellate decisions in a rote manner and that he does not venture out to expand a rule or principle. His decisions are based on the rule of law rather than his personal views. He is described as a "stickler" for the rules of procedure and the law of evidence.

Judge Darrah's written work was described as "adequate" and of "journeyman quality." His opinions are direct and to the point, practical, fair and explain the bases for his rulings. A few lawyers were critical of Judge Darrah for not addressing all of the issues presented by the parties. Some say he is not among the most careful or meticulous of judges on the Northern District in his written work, and that he does not exhibit any flair for scholarship or intellectual curiosity in his written opinions.

Lawyers interviewed had differing views on Judge Darrah's legal ability. Some lawyers said he was "incredibly bright" and had a "sharp mind," but a significant number of other lawyers were sharply critical of his legal ability. In the Council's written survey, Judge Darrah received poor ratings for his understanding of the issues in ordinary and complex cases. In addition, Judge Darrah scored worse than most judges on the survey question about whether he would make a good United States Court of Appeals Judge (question 30).

Judge Darrah is said to do well on issues he is prepared for, but if someone raises new issues he can become frustrated and peremptory. Some experienced lawyers said they know not to bring new issues to Judge Darrah at hearings because he is likely to react in a negative manner.

Judge Darrah's results on the Council's written survey generally put him in the middle when compared with other judges in the Northern District and the survey results supported the areas of some concern highlighted by the lawyers interviewed.

Judge Samuel Der-Yeghiayan

Judge Der-Yeghiayan, born in 1952, was appointed to the District Court by President George W. Bush in 2003. He graduated from Franklin Pierce Law Center in 1978. From 1978 to 2000, he worked at the United States Department of Justice Immigration and Naturalization Service, holding the following positions: Trial Attorney (1978-1982), Acting Appellate Trial Attorney (1981-82), Acting District Director (1986-87), and District Counsel (1982-2000). From 2000 to 2003, he served as a Judge at the Executive Office for Immigration Review at the Department of Justice.

While a minority of lawyers commented positively on Judge Der-Yeghiayan, the vast majority of lawyers interviewed gave him poor marks on virtually all areas relevant to the Council's evaluation, and these poor marks are consistent with the ratings given to Judge Der-Yeghiayan by respondents to the Council's written survey. In the written survey, in comparison to his fellow judges in the Northern District of Illinois, Judge Der-Yeghiayan was rated below average in every survey category. He received particularly low ratings in the following areas: giving due consideration to the convenience of lawyers and litigants, effective assistance with settlements, proper usage of magistrate judges, understanding of the issues, the clarity of his written rulings, and courtesy toward lawyers and litigants. Indeed, in each of these categories, he received the lowest or second lowest score of any judge. Similarly, many of the lawyers interviewed about Judge Der-Yeghiayan reported that he lacks an adequate understanding of the Federal Rules of Civil Procedure and suggested that the judge's background had not prepared him to assume such an important post.⁶ Other attorneys raised concerns about the judge's understanding of the particular substantive area of the law applicable to their particular case.

Lawyers remarked that Judge Der-Yeghiayan does not understand the practical difficulties of civil litigation in federal district court and that he is overly rigid with deadlines and routinely denies requests for extensions of time even if the opposing attorneys have agreed that such an extension is warranted. Another common criticism is that Judge Der-Yeghiayan treats all cases the same without regard to either the case's complexity or the schedules of the lawyers and litigants.

Particularly troubling to many lawyers is Judge Der-Yeghiayan's frequent practice of dismissing cases for want of prosecution if a plaintiff or the plaintiff's attorney misses a status call. Lawyers also reported that he refuses to utilize magistrate judges assigned to his cases. Multiple lawyers have reported that even in situations where both parties consent to the jurisdiction of the magistrate judge, Judge Der-Yeghiayan refuses to sign the order transferring the case to the magistrate judge.

Many lawyers remarked that Judge Der-Yeghiayan displays a temperament and courtroom demeanor that is improper for a federal district court judge. Multiple lawyers claimed that the judge had personally attacked them either in open court or in a written opinion based on factual assertions that were not supported by the record. In contrast, a minority of lawyers gave

⁶ See e.g., *Murray v. GMAC Mortgage Co.*, __ F.3d __, 2006 WL 90081 (7th Cir. 2006) (reversing Judge Der-Yeghiayan's denial of class certification, and explaining that each of the four reasons given for the denial was improper).

a positive review of Judge Der-Yeghiayan's courtroom demeanor, describing him as even-tempered, professional and courteous.

Lawyers do not report that Judge Der-Yeghiayan is biased in any way or susceptible to any outside influences.

In sum, there is a broad consensus among active federal court practitioners that Judge Der-Yeghiayan's performance to date has been deficient. It is the Council's hope that, with the acquisition of greater knowledge and experience, and greater regard for the practical realities and difficulties of modern litigation, Judge Der-Yeghiayan's performance will significantly improve.

Judge Mark R. Filip

Judge Mark R. Filip, born in 1966, graduated from Harvard Law School in 1992. He was appointed to the district court bench in 2003 by President George W. Bush. He served as a law clerk to the Hon. Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit from 1992 to 1993 and to the Hon. Antonin Scalia of the U.S. Supreme Court from 1993 to 1994. Thereafter, he was an Assistant U.S. Attorney for almost five years before joining the law firm of Skadden Arps Slate Meagher & Flom.

When the Council conducted the written survey and investigation for this evaluation, Judge Filip had been on the bench for only about two years, but he is widely praised as being smart, hard-working, and patient. Judge Filip was often referred to as "a welcome addition to the bench." Lawyers report that his decisions are well-reasoned and well-written, and he is described as having a sensitivity to *pro se* plaintiffs. He is known for conducting his own research, when appropriate.

In general, he has an even-tempered demeanor while maintaining good control over his courtroom and his docket. His judicial temperament is described as "unflappable," "approachable," and "professional and easy-going." His integrity is unquestioned.

Lawyers report that he is impartial and open-minded. He takes time to listen but is firm, when necessary, and issues his decisions in a timely manner. He is praised as being well-prepared for each case and is noted for his willingness and ability to assist the parties in settling their cases.

The results of the Council's written survey are even more positive than the results coming from the personal interviews. Compared to his fellow judges, Judge Filip was rated above average (generally substantially above average) in every survey category except for one, and even in that category he was rated average. Moreover, he tied Judge Kocoras for the highest rating in response to the question, "Overall, he/she is a good District Judge," and he received the highest rating in the category, "He/she would make a good United States Court of Appeals Judge." Clearly, in his short time on the bench, Judge Filip has already earned the respect of the active federal bar.

Judge Robert W. Gettleman

Judge Gettleman, born in 1943, was appointed to the District Court by President Clinton in 1994. He is a 1968 graduate of the Northwestern University School of Law. Between 1968 and 1970, Judge Gettleman served as a law clerk to Judges Latham Castle and Luther M. Swygert of the United States Court of Appeals for the Seventh Circuit. Judge Gettleman joined the Chicago law firm of D'Ancona & Pflaum in 1970, and concentrated in civil litigation there until his appointment to the federal bench in 1994.

The Council received very few negative comments about Judge Gettleman. Almost without exception, counsel interviewed by telephone and attorneys who completed the Council's written survey had high praise for Judge Gettleman in virtually every category about which we inquired. One survey respondent succinctly described Judge Gettleman as "a true gentleman and a scholar."

In telephone interviews conducted by the Council, particularly consistent were commendations for his thoroughness, diligence, intellect and professionalism. We received positive feedback from attorneys who prevailed, as well as from those who received adverse rulings. He is almost uniformly considered to be a credit to the bench, and his integrity is unquestioned.

Responses to the Council's written survey further confirm that Judge Gettleman is viewed by attorneys as being especially courteous, as well as having a strong ability to understand complex issues. In addition, Judge Gettleman received high marks for being prompt in issuing decisions after bench trials. Overall, in comparison to his fellow judges in the Northern District of Illinois, Judge Gettleman was rated above average in 25 out of the 28 categories in the Council's written survey.

As reflected in the Council's telephone interviews and in the responses to the Council's written survey, Judge Gettleman is highly regarded by the active federal bar, and is widely perceived to be a model judge.

Judge Joan B. Gottschall

Judge Gottschall, born in 1947, is a 1973 graduate of the Stanford University School of Law. She was an associate with the law firm of Jenner & Block from 1973 to 1976, concentrating in civil and criminal litigation. From 1976 to 1978, she served as a Staff Attorney for the Federal Defender Program in the United States District Court for the Northern District of Illinois. She returned to Jenner & Block as a litigator from 1978 to 1982, where she was a partner from 1981-1982. In 1983-84, she was an attorney with the Office of Legal Counsel at the University of Chicago. She served as a United States Magistrate Judge from 1984 until her appointment as a District Judge in 1996 by President Clinton.

Judge Gottschall is a well-regarded member of the bench. Attorneys who have appeared before her offer high praise for her intelligence, her legal abilities, and the quality and clarity of

her written opinions. Similarly, she receives consistent praise for her integrity, honesty, fairness and lack of bias.

One frequent complaint in both the responses to the Council's written survey and during the Council's interviews of lawyers, however, is that Judge Gottschall is very slow in issuing rulings. In fact, in the survey responses, Judge Gottschall was rated near the bottom (as compared to her fellow judges) for the promptness of her rulings on pretrial civil motions and on substantive motions.

Similarly, in the survey responses Judge Gottschall also was rated near the bottom in the categories "insures steady progress of cases prior to trial" and "conducts court proceedings with appropriate firmness." These survey results are consistent with feedback from lawyers that Judge Gottschall at times appears overwhelmed by her docket and workload, and sometimes struggles to definitively resolve issues from the bench, thereby further increasing her own workload and that of the lawyers who appear before her.

In terms of her judicial temperament, Judge Gottschall generally received positive responses, although several respondents reported that she can be "impatient" and "a little short" while on the bench.

During the Council's interviews of lawyers, Judge Gottschall was praised for promoting settlements in a fair and effective manner and nearly all respondents liked the way she presides over trials.

Overall, Judge Gottschall is well-regarded by the active federal bar. Nevertheless, the Council encourages her to address some case management issues which somewhat undermine her otherwise very solid performance.

Judge Ronald A. Guzman

Judge Ronald A. Guzman, born in 1948, graduated from New York University Law School in 1973. He was appointed to the bench in 2000 by President Clinton. He began his career in private practice with Rodriguez and Guzman between 1973 and 1974. He served as an Assistant Cook County State's Attorney between 1975 and 1980. He then joined a private firm, Pileggi, Guzman, Ginex and Fecarotta, where he practiced between 1980 and 1990. He was then appointed to be a United States Magistrate Judge in the Northern District of Illinois, and he served in that position from 1990 until he became a federal District Judge.

Lawyers interviewed by the Council generally report that Judge Guzman demonstrates a good grasp of the law. However, respondents to the Council's written survey rated him below average (compared to his fellow judges) in his understanding of the issues in both complex and ordinary cases.

Judge Guzman is widely criticized for the slowness with which he rules on motions, for not convening proceedings punctually, and for having a poor judicial temperament while on the bench. In the Council's written survey, Judge Guzman scored significantly below average on the

question about whether he rules promptly on pretrial motions (question number 20). Judge Guzman also scored worse than average on the question about whether he decides substantive motions with reasonable promptness (question number 23).

Lawyers expressed concern about Judge Guzman's temperament. In response to Question 8 of the Council's written survey, "He/she is courteous toward lawyers and litigants," Judge Guzman received the third lowest score, and various lawyers described him as "impatient," "a yeller from the bench," "mean spirited," and "angry."

Overall, the active federal bar found Judge Guzman to have some temperament issues and, in response to Question 29 of the Council's written survey, "Overall, he/she is a good District Judge," Judge Guzman was rated below average.

Judge William J. Hibbler

Judge Hibbler, born in 1946, was appointed to the District Court in 1999 by President Clinton. Judge Hibbler is a 1973 graduate of the DePaul University Law School. He served as an Assistant State's Attorney in Cook County from 1973 to 1977. In 1977, he joined a small Chicago firm, where he had a general practice for four years. In 1981, Judge Hibbler returned to the State's Attorney's Office, serving for two years as a felony trial attorney in the Markham courthouse, supervising attorneys handling preliminary hearings in various branch courts for two years, and supervising felony trials in 1985 and 1986. Judge Hibbler was appointed as an Associate Judge of the Circuit Court of Cook County, Illinois in 1986. From 1986 to 1988 he served in the First Municipal District. From 1988 to early 1995, he was assigned to the Criminal Division as a felony trial judge. In February 1995, he was appointed Presiding Judge of the Juvenile Justice Division of the Juvenile Court, where he served until his appointment to the Federal bench in 1999.

The Council's written survey found Judge Hibbler to be generally well regarded. Lawyers gave Judge Hibbler above average scores in twenty-five out of twenty-eight categories with particularly high marks for impartiality and due consideration to the convenience of lawyers and litigants. In addition, during telephone interviews of lawyers who had recently appeared before him, most lawyers were moderately positive about Judge Hibbler, rating him competent but not outstanding in legal ability in comparison to other judges of the Northern District.

Lawyers praised Judge Hibbler's written opinions, calling them detailed and well-reasoned, clear and logical. His written opinions were praised even by lawyers who disagreed with his rulings or rationales. Some lawyers commented that even Judge Hibbler's erroneous ruling are not egregious or outside the norm. He is decisive, and can "make decisions on the spot and provide his reasoning in a clear and concise manner."

Judge Hibbler is said to respect precedent and the rule of law, and no one questions his integrity or independence. Judge Hibbler gets high marks for his professional and courteous courtroom demeanor, his integrity, his impartiality, and his administrative skills in managing his docket. He does not exhibit any bias in criminal matters, despite his experience as a prosecutor.

Lawyers generally appreciate Judge Hibbler's flexible approach to scheduling issues, but some lawyers believe that Judge Hibbler occasionally gives too much leeway to litigants in complying with their discovery obligations.

Some lawyers report that Judge Hibbler is not active enough in hearings or settlement conferences, seeming to be less engaged in some matters than in others. Similarly, most lawyers report that Judge Hibbler prepares well, but a few lawyers said that he does not always review all the papers submitted by the parties – suggesting that the judge is somewhat inconsistent in the amount of attention he pays to individual cases. Some lawyers believe that Judge Hibbler can be somewhat less effective during settlement conferences because he is unwilling to indicate which way he is leaning on any of the issues.

Overall, Judge Hibbler is regarded by the active federal bar as a solid, impartial and courteous judge.

Judge James F. Holderman

Judge Holderman, born in 1946, is a 1971 graduate of the University of Illinois Law School. He was appointed to the federal district court bench in 1985 by President Reagan. He served as an Assistant United States Attorney between 1972 and 1978. He practiced with what is now Sonnenschein Nath & Rosenthal from 1978 to 1985.

Lawyers report generally that Judge Holderman has good legal ability and that he quickly grasps the relevant facts and issues of a case. For example, in the only *en banc* decision issued by the Seventh Circuit in 2000, Judge Holderman was affirmed by the Seventh Circuit on a difficult case involving novel issues of federal labor law.⁷ Similarly, many lawyers we interviewed praised him as being hard-working and well-prepared. On the Council's written survey questions dealing with legal ability, decisiveness, preparation and diligence, Judge Holderman fared well.

In telephone interviews, some lawyers praised Judge Holderman for his unwillingness to tolerate unnecessary delays, and for his decisiveness. The Council has also received reports of very prompt rulings on fully-briefed motions. Some described him as fair, even-tempered, and generally reasonable.

Many other lawyers, however, had very strong criticisms of his temperament. On particular written survey questions dealing with temperament, he was rated very poorly. Question 4 states, "His/her rulings in criminal cases are free from any disposition to decide for either government or defense." On a 1 to 4 scale with "4" meaning that the respondent strongly disagrees with the statement, Judge Holderman's survey responses averaged a "3.2." The average score for all judges was "1.8." A similar discrepancy occurred in question 8, "He/she is courteous toward lawyers and litigants," and in question 10, "He/she gives due consideration to the convenience of lawyers and litigants in scheduling proceedings." His score on each of these categories was the lowest of any judge. Similarly, he received the lowest score on the question "His/her rulings are not influenced by the identity of the lawyers and parties involved."

⁷ *Contempo Design, Inc. v. Chicago & N.E. IL Carpenters*, 226 F.3d 535 (7th Cir. 2000) (*en banc*).

Differences between Judge Holderman and the U.S. Attorney's Office have been widely publicized in the legal community. Most recently, Judge Holderman asked that the U.S. Attorney's office be investigated by the Department of Justice's Office of Professional Responsibility, which Judge Holderman "wanted to report back to him with its findings." *In the Matter of: United States of America*, 398 F.3d 615, 618 (7th Cir. 2005). The Seventh Circuit ruled that Judge Holderman had no basis for this request, and granted a petition for a writ of mandamus to accomplish Judge Holderman's recusal. *Id.* at 620. In its ruling, the Seventh Circuit took note of the tension between Judge Holderman and the U.S. Attorney's Office:

Tempers have flared on both sides; Judge Holderman tells us (in his response to the petition) that he has said some things that he regrets, and the same should hold true for the United States Attorney, whose petition in this court levels some overwrought charges. We think it likely that everyone has acted from good intentions, but that a strong belief in one's own position has led to the unsound inference that anyone who disagrees must be acting in bad faith. A swift end to this contretemps will allow calmer reflection and, we trust, a restoration of the cordial and mutually respectful relations between bench and prosecutor that are vital to the administration of justice.

Id. at 619-620.

The complaints about Judge Holderman's temperament are not limited to respondents who practice criminal law matters. Many civil litigators interviewed as part of this evaluation complained about unreasonably angry reactions to minor issues. They state that he "yells, screams, and intimidates." One lawyer stated, "Although bright, he regularly abuses his authority and power to punish those appearing before him (both plaintiff and defense) . . . he is an equal opportunity bully."

In its 1991 evaluation of the federal district court judges, the Council found that lawyers were then commenting that Judge Holderman had the potential to be a very good judge, "if his temperament were more even." The current written survey and personal interviews similarly describe a very bright jurist who continues to have an uneven temperament problem that is affecting his performance as a judge.

The average score for all judges on Question 29 of the Council's written survey, "Overall, he/she is a good District Judge," was 1.8. Judge Holderman received a 2.7 – the worst of any judge included in the survey. Given Judge Holderman's solid ratings for legal ability, decisiveness, preparation, and diligence, the active federal bar's dissatisfaction with Judge Holderman appears to be due to his temperament. The Council hopes that he will address this issue.

After reviewing a draft of the Council's evaluation, Judge Holderman stated:

I appreciate the time and effort the Chicago Council of Lawyers spent in preparing the survey and the feedback you have provided the active federal judges.

I will keep a copy in my desk as a daily reminder of where I can improve.

Judge Matthew F. Kennelly

Judge Matthew Kennelly, born in 1956, is a 1981 graduate of Harvard Law School. From 1981 to 1982, he was an associate with the law firm Hedlund, Hunter & Lynch. He was a law clerk to the Hon. Prentice Marshall from 1982-1984. From 1984 until his appointment to the federal bench in 1999 by President Clinton, Judge Kennelly practiced with the law firm Cotsirilos, Stephenson, Tighe & Streicker, Ltd.

Lawyers report generally that Judge Kennelly is an excellent jurist. He has very good legal ability and he was characterized as being very knowledgeable and committed to knowing and understanding the law. He was also described as working hard to be certain that he truly understood the legal concepts and applied them appropriately.

Judge Kennelly was described as decisive and fair with respect to issues that came before him, and as one who sticks to deadlines. He is generally well-prepared for each case that comes before him. He runs his courtroom efficiently and effectively, and he is relatively even-tempered and courteous to all litigants. Several of the respondents who were involved in *pro se* litigation made a point of commenting that *pro se* litigants were treated with respect and patience. The one criticism of Judge Kennelly, however, was that he is sometimes short with counsel. No lawyers interviewed said that this trait affected his judicial judgment.

Overall, Judge Kennelly is considered by the active federal bar to be one of the best judges on the Chicago bench. In response to the Council's written survey, he scored better than the average aggregate score of all the judges on 27 of the 28 questions, including question 29, "Overall, he/she is a good District Judge." He scored particularly well for his understanding of the issues in complex cases, conducting proceedings with appropriate firmness, effectively assisting the parties to reach a settlement, promptness of rulings, and preparedness.

Judge Charles P. Kocoras

Judge Kocoras, born in 1938, was appointed by President Carter in 1980, and is presently the Chief Judge of the Northern District of Illinois. He graduated from DePaul University College of Law in 1969, after which he entered private practice with Bishop and Crawford. From 1971 to 1977, he was an Assistant United States Attorney, where he rose to the position of First Assistant United States Attorney. In 1977, he became chairman of the Illinois Commerce Commission. From 1979 to 1980, he was in private practice with Stone, McGuire, Benjamin & Kocoras.

Judge Kocoras received very positive remarks regarding his overall legal ability, his integrity, diligence, judicial temperament and courtroom demeanor. These remarks are consistent with the very favorable rating he received by respondents to the Council's written survey, in which Judge Kocoras tied Judge Filip for the highest rating in response to the question, "Overall, he/she is a good District Judge." Many lawyers remarked that he is up to date regarding current developments in the law, and that he is knowledgeable to very well-versed in matters of both procedural and substantive law. The judge was described as being very good at communicating the reasons for his rulings and having great listening skills and patience. Overall, lawyers commented that Judge Kocoras displays an even-tempered nature and an appropriate courtroom demeanor. Many lawyers remarked positively on the judge's penchant for using humor in an appropriate fashion.

Judge Kocoras' written rulings are described as well-reasoned, clear and easily understood, as well as correct, logical, rational, and to the point. Most lawyers described his pretrial procedures as effective and fair, or at least not overly onerous. Some lawyers remarked that Judge Kocoras can be overly rigid regarding deadlines and requests for extensions of time. The general consensus, however, is that he is strict but fair.

The overwhelming majority of lawyers praised the judge's preparedness for arguments, hearings and trials, his punctuality, his courteousness, and his respect for the rule of law. Many lawyers commended the judge for taking the time to read all of the parties' written submissions before motion calls, hearings and trials. Lawyers also commented positively on Judge Kocoras' decisiveness, describing him as a judge who is neither unduly rigid nor unduly lenient. A small number of lawyers commented that the judge is unreceptive to arguments suggesting that he is wrong and a few commented that he is sometimes "arrogant."

Lawyers were largely complementary in their esteem for Judge Kocoras' integrity, impartiality, and freedom from bias or political influence. A majority of lawyers used terms such as "unquestioned," "impeccable," "utmost," "sterling," "absolutely the best," "first rate," and "above reproach" when asked to give opinions generally concerning Judge Kocoras' integrity.

While the Council did receive a few stray comments about Judge Kocoras' temperament and treatment of attorneys, overall he received very high marks in virtually every category measured by the Council. In fact, in the Council's written survey, in comparison to his fellow judges in the Northern District of Illinois, Judge Kocoras was rated above average in every survey category except for one, and even in that category, he was rated average.

Accordingly, whether measured by the results of the Council's written survey or by its telephone interviews, Judge Kocoras is clearly regarded by the active federal bar as one of the best judges in the Northern District of Illinois.

Judge Joan Humphrey Lefkow

Judge Lefkow, born in 1944, was appointed by President Clinton in 2000. She graduated from Northwestern University School of Law in 1971. Thereafter, from 1971 through 1972, she was a law clerk to the Honorable Thomas E. Fairchild on the Seventh Circuit Court of Appeals. For three years, beginning in 1972, she was an attorney at the Legal Assistance Foundation of Chicago. From 1975 to 1979, she was an Administrative Law Judge with the Illinois Human Rights Commission, where she was promoted to Chief Administrative Law Judge in 1977. From

1980 through 1981, she taught Contracts, Legal Writing and Moot Court at the University of Miami Law School. From 1981-1982, Judge Lefkow was the Executive Director of the Cook County Legal Assistance Foundation.

Judge Lefkow took the bench in 1982 when she became a United States Magistrate Judge. She served as a Magistrate Judge until 1997. In 1997, she became a United States Bankruptcy Court Judge, where she remained until 2000 when she was elevated to the position of United States District Court Judge.

Attorneys interviewed had consistent praise for her patience and her ability to set reasonable deadlines, while still being sensitive to lawyers' hectic schedules. Similarly, in the Council's written survey, respondents rated her substantially above average (in comparison to her fellow judges in the Northern District of Illinois) for courtesy and due consideration to the convenience of lawyers and litigants. With virtual unanimity, lawyers praised her judicial temperament, although some reported that she was courteous and nice to a fault.

Judge Lefkow's rulings are considered fair, timely and well reasoned. She has a good work ethic, is conscientious, thorough and well prepared. She is described as capable, bright and competent with good control over her courtroom and docket. Although some lawyers noted that she has a reputation for favoring the "underdog," there was no indication that she was not impartial, that she was an ideologue or that she was likely to bend the law in favor of either party. As one person noted, "she calls it as she sees it and gives an honest interpretation of the law."

Overall, Judge Lefkow received consistently high ratings in the Council's written survey, and she is considered to be a very good judge by the active federal bar.

Judge Blanche Manning

Blanche Manning, born in 1934, was appointed to the District Court by President Clinton in 1994. She graduated from John Marshall Law School in 1967. She worked as an Assistant State's Attorney for five years. She then spent four years as an attorney at the U.S. Equal Employment Opportunity Commission, one year as in-house counsel at United Airlines, and one year as an Assistant U.S. Attorney. In 1992, Judge Manning received an LL.M. from a special program for judges at the University of Virginia. Judge Manning served as a judge and justice in the Illinois courts for 15 years, where she was highly regarded. She was appointed an Associate Judge in Cook County in 1979, and she became a Circuit Judge in Cook County in 1986. She was appointed to the Illinois Appellate Court in 1987, and elected to the court in 1988.

Most lawyers interviewed about Judge Manning report that she is competent and has a good understanding of the law. However, a minority report that she is "not totally on top of things" and that her legal ability is in the lower tier of the Northern District judges. In the Council's written survey, Judge Manning was rated substantially below average (compared to her fellow judges in the Northern District of Illinois) in her understanding of the issues, and she received the lowest rating of any judge for her preparedness for hearings and pretrial

conferences. Although most lawyers who were interviewed describe Judge Manning's written opinions as well-written and sufficiently dealing with all issues in the case, survey respondents nevertheless rated the quality of her written rulings as below average compared to those of her fellow judges.

Judge Manning was also widely criticized by members of the bar for her lack of punctuality. In the Council's written survey, she received the lowest scores of any Judge in the District for the punctuality of court proceedings, promptness in ruling on pretrial civil motions, and promptness in deciding substantive motions. One lawyer who was interviewed said that it seemed like Judge Manning "did not want to make decisions until pressed." Another said that she "was decisive in her written opinions, but often went back and forth when ruling from the bench."

Judge Manning is universally praised for her integrity, fairness, impartiality, and businesslike manner in conducting court proceedings. She is free from political or institutional influences, and she follows the rule of law. Judge Manning is always courteous to all parties who appear before her, and she spends extra time making sure that *pro se* litigants understand the proceedings. One lawyer describes Judge Manning as having an "ideal judicial temperament." Lawyers also admire her pleasant, easygoing, affable demeanor and appreciate her "direct and to-the-point" style. Several lawyers report incidents during trials in which lawyers or litigants were accused of behaving improperly. In each case, Judge Manning quietly cleared the courtroom, held a short hearing, and resolved the matter quickly and fairly. Judge Manning is widely viewed as requiring parties to adhere to deadlines, but willing to make reasonable accommodations when necessary.

Most lawyers report that Judge Manning is an effective courtroom administrator and that her website provides helpful information on pre-trial procedures. Some lawyers object, however, to Judge Manning's procedures under which parties are required to obtain leave of court before filing a motion to dismiss (other than a motion to dismiss in lieu of an answer), a motion to remand, a motion to change venue, a motion for judgment on the pleadings, or a motion for summary judgment. Many of those lawyers consider these procedures to be a useless exercise that merely wastes time and increases litigation costs.

On the whole, Judge Manning is viewed by the active bar as a capable judge with many positive attributes, but also room for improvement in some important areas of her performance.

Judge Charles R. Norgle

Judge Norgle, born in 1937, was appointed to the District Court in 1984 by President Reagan. He graduated from John Marshall Law School in 1969. He served as an Assistant State's Attorney in DuPage County from 1969 to 1971 and as a Deputy Public Defender there from 1971 to 1973. He was an Associate Judge in DuPage County from 1978 to 1981, and a Circuit Judge in DuPage County from 1977 to 1978 and from 1981 to 1984.

Many lawyers praise Judge Norgle's efficiency, his organizational skills, his knowledge of the law, and his strict adherence to deadlines and procedures. Judge Norgle is said to be a stickler for following rules and procedures and runs an efficient courtroom.

Attorneys give Judge Norgle high marks for being a decisive judge who does not hesitate to rule, regardless of whether the matter is a simple discovery dispute or a decision on the merits. As one survey participant remarked, "he's no shrinking violet." Nevertheless, Judge Norgle can be persuaded to reconsider his position, when appropriate.

Evaluations of Judge Norgle's judicial temperament are varied, but most believe him to be even-tempered and professional. Most attorneys report that Judge Norgle is generally courteous and patient with parties, especially with *pro se* litigants. Others find him to be impatient at times, but not intemperate; he makes his displeasure clear without being inappropriate. Lawyers report that although he can be grouchy or brusque, he is not mean-spirited and holds people to reasonable professional expectations. Judge Norgle did score worse than the average for other current judges in the Northern District on the written survey question about whether he is courteous towards lawyers and litigants (question no. 8).

One concern raised by some lawyers is Judge Norgle's perceived possible bias in favor of employers in employment discrimination cases and in favor of the prosecution in criminal cases. In the written survey of members of the federal trial bar, Judge Norgle scored worse than average on the question about whether his rulings in criminal cases are free from any predisposition to decide for either government or defense (question no. 4). In addition, some attorneys report that Judge Norgle shows hostility toward plaintiffs in employment discrimination matters, and that he goes out of his way to rule for employers, regardless of the merits. Judge Norgle scored substantially worse than average on the written survey question about whether his rulings in civil cases are free from any predisposition to decide for either plaintiffs or defendants (question no. 5). Judge Norgle also scored worse than average on the written survey question about refraining from prejudging the outcome of a case during pretrial or early trial proceedings (question no. 11).

Most lawyers view Judge Norgle as hard-working and generally well-prepared for the cases on his docket. Most agree that the clarity and quality of his writing and reasoning is adequate, but generally not exceptional. Although most lawyers say that the judge's written rulings sufficiently deal with the issues in the case, a few attorneys said that the judge omitted significant issues, or even whole counts of a complaint, causing uncertainty about those claims or even the disposition of the case as a whole.

Members of the federal trial bar gave Judge Norgle a worse than average score on the question about whether he understands the issues in complex cases (question no. 14).

Many attorneys report that Judge Norgle issues his written opinions in a timely manner, but an equal number report the opposite. In the written survey results Judge Norgle scored worse than average on the question about whether he rules promptly on pretrial civil matters (question no. 20) and whether he insures steady progress of cases prior to trial (question no. 21). Lawyers reported some lengthy delays in summary judgment rulings. Lawyers also report that he

sometimes requires the parties to file lengthy pretrial orders before he rules on pending summary judgment motions, thereby causing litigants to incur potentially needless expense.

Overall, with the possible exception of criminal and employment discrimination cases, Judge Norgle is viewed by lawyers as being impartial. Lawyers report that Judge Norgle respects the rule of the law, and is independent of political and institutional influences.

Judge Rebecca R. Pallmeyer

Judge Rebecca R. Pallmeyer, born in 1954, is a 1979 graduate of the University of Chicago Law School. She was appointed to the federal district court bench in 1998 by President Clinton. Upon graduating from law school, she clerked for the Hon. Rosalie E. Wahl of the Minnesota Supreme Court. From 1980 to 1985 she served as an Associate with Hopkins & Sutter in Chicago. She was an Administrative Law Judge with the Illinois Human Rights Commission from 1985 to 1991, and served as a United States Magistrate Judge in Chicago from 1991 to 1998.

Judge Pallmeyer is considered to be very smart, to understand complex matters, and to have an excellent temperament. She is praised as a good listener by counsel, but a judge who maintains control over the courtroom. She is even-tempered but can be firm, when necessary. She handles *pro se* litigants with courtesy and professionalism. She starts her call on time. Her integrity is unquestioned. The evaluation uncovered no concerns about impartiality.

The evaluation received a few comments regarding indecisiveness. These lawyers indicated that she can take time to make a decision and sometimes changes her mind after hearing further argument. Indeed, the only survey question where Judge Pallmeyer scored below average (compared to her fellow judges) was Question 22, "He/she rules with appropriate decisiveness during trial." On this question, she scored slightly below the average score. Among those interviewed who raised this issue, all said that they did not see this as a major problem affecting her judgment. Rather, they attributed this to her ability to change her mind and make sure that she got the right answer.

Judge Pallmeyer received very high ratings in the Council's written survey. Of the 28 categories in the survey, Judge Pallmeyer was rated substantially above average in a majority, and near the top in categories measuring temperament and courtesy. Likewise, she was also rated near the top in the categories of "Overall, he/she is a good District Judge" and "He/she would make a good United States Court of Appeals Judge."

In sum, many of the lawyers interviewed for this evaluation described Judge Pallmeyer as an "ideal judge," and the written survey results confirm that that opinion is widely held by federal court lawyers.

Judge Amy J. St. Eve

Judge Amy J. St. Eve, born in 1965, graduated from Cornell Law School in 1990. She was appointed to the federal district bench in 2002 by President George W. Bush. She was in

private practice between 1990 and 1994. She was an Associate Independent Counsel for the Whitewater Independent Counsel between 1994 and 1996, and was an Assistant United States Attorney between 1996 and 2001. She served as Senior Counsel to Abbott Laboratories between 2001 and 2002.

Results from the Council's written survey and personal interviews demonstrate that Judge St. Eve is widely regarded as being a hard-working federal judge with excellent legal ability and court management skills. She is considered to be up-to-date on the law and well-prepared. According to the lawyers interviewed, she starts her court sessions on time and keeps firm control of the progress of her cases. Lawyers report that while she maintains control of her docket, she is reasonable in dealing with requests for extensions as long as a sufficient basis is given.

Her rulings are praised as well reasoned and she issues rulings in a timely fashion. Judge St. Eve is seen as fair and impartial and is courteous to counsel and litigants. Despite her relative inexperience on the bench, she is perceived as having the skills of a veteran jurist. It is noteworthy that in the Council's written survey, in comparison to her fellow judges in the Northern District of Illinois, Judge St. Eve was rated above average in every survey category except for one, and even in that category, she was rated average.

In response to survey Question 29, "Overall, he/she is a good District Judge," only two of her colleagues received a higher score. That is a remarkable showing for a judge so new to the federal bench, and the Council encourages her to continue the practices which have already resulted in her being held in such high regard by the active federal bar.

Judge James B. Zagel

Judge Zagel, born in 1941, was appointed to the District Court by President Reagan in 1987. He graduated from Harvard Law School in 1965. Judge Zagel became an Assistant State's Attorney in Cook County upon graduation from law school. From 1969 to 1977, he was an Assistant Attorney General in Illinois, except for six months in 1975, when he was Chief Assistant to then-Arizona Attorney General Bruce Babbitt. In 1977, Governor Thompson named Judge Zagel Executive Director of the Illinois Law Enforcement Commission, and in 1979 he became Director of the Illinois Department of Revenue. In 1980, he became Director of the Department of Law Enforcement, which later became the Department of State Police.

Judge Zagel has an excellent reputation for competence, integrity, and judicial demeanor. Lawyers generally give him high marks for his legal abilities, including the scope and breadth of his knowledge in a variety of substantive legal areas and his ability to analyze and simplify complex legal issues. Lawyers praise his written work, decisiveness, knowledge of their cases, temperament, and overall legal ability. Many lawyers express the opinion that he conducts himself like a model judge. Indeed, respondents to the Council's written survey rated Judge Zagel as above average (compared to his fellow judges in the Northern District of Illinois) in 25 of 28 categories. Furthermore, in response to the survey question, "Overall, he/she is a good District Judge," Judge Zagel was rated higher than all but four judges.

In response to the Council's written survey, respondents rated Judge Zagel above average in terms of lack of bias in both civil and criminal cases. Nevertheless, some attorneys interviewed about Judge Zagel questioned his impartiality, expressing the opinion that early in the proceedings he forms an opinion about the parties, the merits, or the appropriate disposition of the case, and thereafter conducts the proceedings in such a way as to effectuate the desired outcome.

Another criticism of Judge Zagel voiced by some interviewees relates to administrative issues and case management. Lawyers report that he routinely starts his court sessions late, and several report being kept waiting for extended periods with no explanation for the delay. Indeed, in the Council's written survey, in the category "He/she convenes court punctually," Judge Zagel received his lowest score compared to his fellow judges. Some lawyers also complain that Judge Zagel is a bit too quick to grant extensions of time, and that his chambers issues orders that do not accurately reflect the Judge's rulings in open court.

Overall, Judge Zagel is highly regarded by the active federal bar. The criticisms related to case management and administration are correctable, and the Council hopes that Judge Zagel will address these issues.

V. Conclusion.

On the whole, the non-senior U.S. district judges in Chicago are held in high regard by the lawyers who appear before them. Although there are certainly judges who are held in lower regard than others, the Council received few complaints of bias or lack of impartiality, and absolutely no suggestions or hints of dishonesty, corruption, impropriety, or blanket disregard of the law by any judge.

To the extent that this evaluation contains negative feedback, the Council hopes that such feedback will be used as an opportunity for positive improvement. Conversely, by shining rare public light on the characteristics of the district's most highly regarded judges, the Council hopes that such characteristics will become benchmarks for all judges, at whatever level and whatever locale.

Respectfully Submitted,

The Chicago Council of Lawyers

By: 

Carrie Huff, President
Chicago Council of Lawyers

By: 

Malcolm Rich, Executive Director
Chicago Council of Lawyers

By: 

Michael W. Early, Co-Chair
Federal Judicial Evaluation Committee
Chicago Council of Lawyers

By: 

Peter A. Steinmeyer, Co-Chair
Federal Judicial Evaluation Committee
Chicago Council of Lawyers

April 2006

APPENDIX

Exhibit 1

**The Results of the Chicago Council of Lawyers'
2005 Written Survey Regarding the Performance of
Non-Senior U.S. District Judges in Chicago**

Exhibit 2

**The Chicago Council of Lawyers' 2005 Written Survey
Regarding the Performance of
Non-Senior U.S. District Judges in Chicago
and Accompanying Cover Letter**

Exhibit 3

**The Telephone Interview Script Used in Connection With the
Chicago Council of Lawyers' Evaluation of
Non-Senior U.S. District Judges in Chicago**

Exhibit 1: The Results of the Chicago Council of Lawyers' 2005 Written Survey Regarding the Performance of Non-Senior U.S. District Judges in Chicago																				
	Average Scores for each District Judge: For questions 3-30, the lower the average score, the more the survey respondents agreed with the question.																			
	Wayne R. Andersen	Elaine E. Buckio	Ruben Castillo	David H. Coal	John W. Darrah	Samuel Der-Yeghiayan	Mark R. Filip	Robert W. Getteman	Jean B. Gottschall	Ronald A. Guzman	William J. Hibbler	James F. Holdeman	Matthew F. Kennedy	Charles P. Kocoras	Jean Hummrover Lefkowitz	Blanche M. Manning	Charles R. Norale	Rebecca R. Palimover	Amy J. St. Eve	James B. Zapel
Overall Average																				
	Your Experience Before Each Judge																			
1.3	1. State the number of trials (including preliminary injunction hearings) in which you have actively participated before each judge during the past five years.																			
	1.7	1.1	1.3	1.3	1.3	1.1	1.1	1.5	1.1	1.2	1.3	1.4	1.5	1.3	1.3	1.1	1.3	1.2	1.1	1.1
3.1	2. State the approximate number of contested motions in which you have actively participated before each judge in the past five years.																			
	3	4	2.4	3.2	3	2.5	2	3	4	3.2	2.4	3.1	3.9	3.3	3.2	2.7	2.5	3.7	2.5	3.5
	Integrity (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																			
1.5	3. His/her rulings are not influenced by the identity of the lawyers and parties involved.																			
	1.5	1.8	1.6	1.1	1.7	2.2	1.1	1.4	1.3	1.4	1.2	2.4	1.4	1.3	1.3	1.4	1.7	1.2	1.1	1.4
1.8	4. His/her rulings in criminal cases are free from any predisposition to decide for either government or defense.																			
	1.6	2.4	2.1	1.6	1.9	2.4	1.1	1.9	1.7	1.8	1.2	3.2	2	1.4	1.3	1.7	2.3	1.5	1.2	1.4
1.6	5. His/her rulings in civil cases are free from any predisposition to decide for either plaintiff or defendant.																			
	1.5	1.8	1.8	1.4	1.6	2.3	1.3	1.5	1.6	1.6	1.4	2.2	1.5	1.4	1.6	1.4	2.2	1.2	1.3	1.4
	6. His/her awards of attorney's fees in appropriate cases and fees to court-appointed trustees and similar appointees are fair and reasonable.																			
1.7	1.5	2.4	1.5	1.5	1.3	2.4	1	1.8	1.1	1.4	1.6	2.4	1.5	1.5	1.5	1.6	2.3	1.5	1.7	1.7
1.2	7. He/she refrains from ex parte communications.																			
	1.8	1.2	1.1	1.1	1.3	1.3	1.1	1.2	1.1	1.2	1.1	1.4	1.1	1.2	1.1	1.2	1.1	1.1	1.1	1.1
1.6	8. He/she is courteous toward lawyers and litigants.																			
	1	1.9	2.1	2.1	2	2.5	1.1	1.2	1.4	2.2	1.2	3.1	1.4	1.3	1.1	1.2	2	1.1	1.1	1.3
	9. He/she conducts court proceedings with appropriate firmness.																			
1.6	1.6	1.9	1.7	1.6	1.7	2.3	1.2	1.3	2	1.8	1.5	2.7	1.3	1.4	1.5	1.7	1.7	1.4	1.4	1.4

	Wayne R. Andersen	Elaine E. Buckio	Ruben Castillo	David H. Coal	John W. Darrab	Samuel Der-Yeghayan	Mark R. Filio	Robert W. Getteman	Joan B. Gottschall	Ronald A. Guzman	William J. Hibbler	James F. Holderman	Matthew F. Kennelly	Charles P. Kocoras	Joan Humphrey LeKow	Blanche M. Manning	Charles R. Norale	Rebecca R. Palmmeier	Amy J. St. Eve	James B. Zager
Integrity (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
10. He/she gives due consideration to the convenience of lawyers and litigants in scheduling proceedings.	1.2	1.8	2.2	2.2	2.1	2.8	1.2	1.4	1.3	2	1.2	2.9	1.5	1.3	1.2	1.3	2	1.2	1.3	1.4
11. He/she refrains from prejudging the outcome of a case during pretrial or early trial proceedings.	1.5	2.1	2.1	1.4	1.8	2.3	1.2	1.5	1.6	1.6	1.3	2.6	1.5	1.3	1.4	1.4	2.1	1.3	1.2	1.4
12. He/she effectively assists the parties to reach settlement.	1.5	2.3	2	2.1	1.8	3.2	1.4	1.6	1.9	1.9	1.6	2.4	1.5	1.4	1.4	2	2.3	1.5	1.3	1.6
13. He/she refrains from coercing settlements.	1.4	1.2	2.3	1.5	1.3	1.8	1.2	1.2	1.1	1.4	1.1	2.2	1.3	1.2	1.1	1.3	1.8	1.1	1.1	1.3
Legal Ability (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
14. He/she understands the issues in complex cases.	1.4	2	1.6	1.5	2.1	2.4	1.1	1.2	1.7	1.8	1.6	1.6	1.2	1.2	1.4	2.1	2.1	1.3	1.2	1.2
15. He/she readily understands the issues in ordinary cases.	1.3	1.6	1.2	1.2	1.6	2.2	1	1.1	1.4	1.5	1.2	1.3	1.1	1.1	1.1	1.2	1.6	1.5	1.1	1.1
16. He/she states the reasons for ruling in appropriate instances.	1.3	1.7	1.4	1.4	1.7	2	1.2	1.2	1.4	1.5	1.3	1.7	1.2	1.2	1.3	1.5	1.6	1.2	1.1	1.2
17. His/her written rulings are clearly expressed.	1.4	1.6	1.4	1.3	1.7	2.1	1.2	1.2	1.5	1.5	1.3	1.6	1.2	1.2	1.4	1.7	1.6	1.1	1.2	1.3
18. His/her oral rulings are clearly expressed.	1.3	1.8	1.4	1.3	1.8	2.2	1.2	1.2	1.5	1.6	1.4	1.6	1.2	1.2	1.4	1.8	1.7	1.2	1.1	1.3
19. He/she is attentive to arguments and testimony.	1.3	2	1.7	1.5	1.7	2.1	1.1	1.2	1.4	1.5	1.2	2	1.3	1.2	1.3	1.6	1.8	1.1	1.2	1.2

	Wayne R. Anderson	Elaine E. Buckle	Ruben Castillo	David H. Coar	John W. Darrah	Samuel Der-Yeghayan	Mark B. Filipe	Robert W. Goldstein	Joan B. Gottschall	Ronald A. Guzman	William J. Hibbler	James F. Holderman	Matthew F. Kennelly	Charles P. Kocoras	Joan Humphrey Lefkowitz	Blanche M. Manning	Charles R. Norgle	Rebecca R. Palmeyer	Amy J. St. Eve	James B. Zager
Decisiveness (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
20. He/she rules promptly on pretrial civil motions.	1.9	2	1.6	1.8	1.7	1.9	1.6	1.4	2.4	2.1	1.6	1.5	1.3	1.4	1.5	2.5	2.1	1.6	1.3	1.4
21. He/she insures steady progress of case prior to trial.	1.8	1.8	1.4	1.3	1.5	1.8	1.4	1.4	2.1	1.8	1.5	1.5	1.2	1.3	1.5	2.1	2	1.5	1.3	1.6
22. He/she rules with appropriate decisiveness during trial.	1.7	2.3	1.3	1.1	1.5	2.1	1.1	1.2	1.8	1.5	1.2	1.7	1.1	1.1	1.2	1.6	1.4	1.5	1.1	1.1
23. He/she decides substantive motions with reasonable promptness.	1.9	2	1.5	1.6	1.7	2.1	1.7	1.4	2.2	2	1.6	1.5	1.2	1.3	1.5	2.5	2	1.6	1.3	1.3
24. He/she promptly issues decisions after bench trials.	1.4	1.7	1.3	1.9	1.4	2.3	1.2	1.1	1.5	1.4	1.4	1.7	1.2	1.4	1.1	1.9	2	1.5	1.3	1.2
25. He/she uses magistrate judges properly with regard to substantive matters.	1.2	1.4	1.4	1.3	1.6	2.4	1.1	1.2	1.3	1.4	1.5	1.6	1.2	1.2	1.2	1.4	1.5	1.2	1.3	1.2
Diligence (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
26. He/she convenes court punctually.	1.5	1.8	1.3	1.3	1.3	1.6	1.2	1.3	1.6	1.8	1.5	1.3	1.2	1.2	1.4	2.1	1.4	1.2	1.1	1.9
27. His/her hearings and pretrial conferences reflect adequate research and preparation.	1.5	1.9	1.6	1.4	1.8	1.9	1.2	1.3	1.6	1.6	1.4	1.5	1.2	1.3	1.4	2.1	1.8	1.2	1.2	1.2
28. He/she deals with emergency matters expeditiously.	1.3	1.6	1.2	1.3	1.3	1.8	1.1	1.2	1.3	1.2	1.1	1.3	1.1	1.2	1.2	1.7	1.7	1.2	1.1	1.2
Overall (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
29. Overall, he/she is a good District Judge.	1.5	2.2	1.8	1.7	2.1	2.6	1.2	1.5	1.8	2.1	1.6	2.7	1.5	1.2	1.5	2.1	2.2	1.3	1.3	1.4
30. He/she would make a good United States Court of Appeals Judge.	2	2.7	2.2	2	2.8	3.1	1.4	1.8	2	2.5	2.1	3	1.6	1.5	2	2.9	2.7	1.6	1.6	1.7

Background: According to the demographic information provided by the survey respondents, the average number of years that a respondent had practiced law was 21.6 years. On average, the survey respondent had been appearing in the federal district court for the Northern District for 19.4 years. 14 survey respondents are prosecutors, 34 do at least some criminal defense, and the rest are civil litigators.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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Exhibit 2: The Chicago Council of Lawyers' 2005 Written Survey Regarding the Performance of Non-Senior U.S. District Judges in Chicago and Accompanying Cover Letter

Chicago Council of Lawyers

Dear Lawyer:

The Chicago Council of Lawyers requests your cooperation in evaluating the performance of the sitting United States District Judges in Chicago. You have been selected as a respondent because of your membership in the Federal Trial Bar. We have enclosed a questionnaire for you to complete, along with an extra sheet for you to use in giving us your written feedback on any of the federal judges. Your responses will be used anonymously.

This is the fifth survey conducted by the Council. Our previous surveys received nationwide attention as unique assessments of the federal courts. The results of this survey will inform the judges of the bar's opinion about their strengths and about areas where the bar perceives each judge could improve.

This survey will serve several purposes. First, it will give judges feedback not readily available. This will enable them to consider changing their practices in areas where members of the bar have concerns. Second, the survey will provide information to other lawyers and to the public about the performance of each judge and of the court as a whole. Finally, the survey will provide a method of assessing whether the proper persons are being selected for the bench. By reviewing the survey as a whole, and comparing it to the Council's prior surveys, those responsible for choosing and approving federal judges in Chicago will have information about the quality of those chosen for the bench.

We hope you will participate in this project and do so at your earliest convenience. The tabulation of the responses will serve a constructive purpose only if there is a broad base of participation. For statistical purposes please answer the final questions on your background and return the questionnaire even if you do not feel qualified to rate any of the Judges. Please reply by **September 8, 2005**.

A stamped reply envelope has been enclosed for your convenience in returning the questionnaire to us. If you have any questions, please call the Council's Executive Director, Malcolm Rich, at (312) 988-6552. We appreciate your cooperation.

Very truly yours,

Michael W. Early
Co-Chair, Federal Judicial Evaluation Committee

Peter A. Steinmeyer
Co-Chair, Federal Judicial Evaluation Committee

INSTRUCTIONS

The first two questions on the survey ask how much, and what kind of, personal experience you have had before the district judges about whom we are surveying. The next questions relate to integrity, judicial temperament, legal ability, decisiveness, diligence and overall evaluation of sitting federal district court judges. Please answer as many of the following questions as you can for each judge. Each of your answers should be based solely upon your personal observations within the past five years. Please do not base your

answers on the opinions of other lawyers which you may have heard.

The questions ask the degree to which you agree with favorably phrased statements about each judge. Agreement will indicate a favorable assessment of the particular judge on a given characteristic and disagreement will indicate an unfavorable assessment. If you do not have sufficient personal experience to provide an informed opinion about a given characteristic of a particular judge, please leave the

appropriate response for that question blank. If you have sufficient personal experience within the past five years but have no opinion about one or more characteristics, please respond with the letter "N" to indicate "no opinion."

On the last page, there is a short series of questions about your background and an extra sheet has been provided for your optional comments about specific judges.

Thank you for your cooperation.

	District Judges	Your Experience Before Each Judge
	Wayne R. Andersen Elaine E. Buckle Ruben Castillo David H. Coar John W. Darrah Samuel Dar-Yeghlayan Mark R. Filip Robert W. Gellerman Joan B. Gottschall Ronald A. Guzman William J. Hibbler James F. Holderman Matthew F. Kennedy Charles P. Kocoras Joan Humphrey Lebowitz Blanche M. Manning Charles R. Noggle Rebecca R. Pallmeyer Amy L. St. Eve James B. Zagel	<p>1. State the number of trials (including preliminary injunction hearings) in which you have actively participated before each judge during the past five years.</p> <p>2. State the approximate number of contested motions in which you have actively participated before each judge in the past five years.</p> <p>Integrity (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)</p> <p>3. His/her rulings are not influenced by the identity of the lawyers and parties involved.</p> <p>4. His/her rulings in criminal cases are free from any predisposition to decide for either government or defense.</p> <p>5. His/her rulings in civil cases are free from any predisposition to decide for either plaintiff or defendant.</p> <p>6. His/her awards of attorney's fees in appropriate cases and fees to court-appointed trustees and similar appointees are fair and reasonable.</p> <p>7. He/she refrains from ex parte communications.</p> <p>8. He/she is courteous toward lawyers and litigants.</p> <p>9. He/she conducts court proceedings with appropriate firmness.</p>

	Wayne R. Andersen	Elaine E. Buckle	Ruben Castillo	David H. Coar	John W. Darrah	Samuel Dac-Yeghayan	Mark R. Ellip	Robert W. Gettleman	Joan B. Gottschall	Ronald A. Guzman	William J. Hibbler	James F. Holderman	Matthew F. Kennelly	Charles P. Kocoras	Joan Humphrey Lebow	Blanche M. Manning	Charles R. Noggle	Rebecca R. Palmyer	Amy L. St. Eve	James B. Zagel
Integrity (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
10. He/she gives due consideration to the convenience of lawyers and litigants in scheduling proceedings.																				
11. He/she refrains from prejudging the outcome of a case during pretrial or early trial proceedings.																				
12. He/she effectively assists the parties to reach settlement.																				
13. He/she refrains from coercing settlements.																				
Legal Ability (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
14. He/she understands the issues in complex cases.																				
15. He/she readily understands the issues in ordinary cases.																				
16. He/she states the reasons for ruling in appropriate instances.																				
17. His/her written rulings are clearly expressed.																				
18. His/her oral rulings are clearly expressed.																				
19. He/she is attentive to arguments and testimony.																				

	Wayne R. Andersen	Elaine E. Buckle	Ruben Castillo	David H. Coar	John W. Darrah	Samuel Der-Yeghiazarian	Mark R. Ellip	Robert W. Gettelman	Joan B. Gottschall	Ronald A. Guzman	William J. Hibbler	James F. Holderman	Matthew E. Kennedy	Charles P. Kocoras	Joan Humphrey Lefkowitz	Blanche M. Manning	Charles R. Norgle	Rebecca R. Pallmeyer	Amy J. St. Eve	James B. Zapel
Decisiveness (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
20. He/she rules promptly on pretrial civil motions.																				
21. He/she insures steady progress of case prior to trial.																				
22. He/she rules with appropriate decisiveness during trial.																				
23. He/she decides substantive motions with reasonable promptness.																				
24. He/she promptly issues decisions after bench trials.																				
25. He/she uses magistrate judges properly with regard to substantive matters.																				
Diligence (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
26. He/she convenes court punctually.																				
27. His/her hearings and pretrial conferences reflect adequate research and preparation.																				
28. He/she deals with emergency matters expeditiously.																				
Overall (1-strongly agree, 2-mildly agree, 3-mildly disagree, 4-strongly disagree, N-no opinion)																				
29. Overall, he/she is a good District Judge.																				
30. He/she would make a good United States Court of Appeals Judge.																				
Your Background																				
31. How many years have you been practicing law?																				

[illegible]

Exhibit 3

The Telephone Interview Script Used in Connection With the Chicago
Council of Lawyers' Evaluation of
Non-Senior U.S. District Judges in Chicago

SAMPLE FEDERAL EVALUATION SCRIPT

"I'm calling from the Chicago Council of Lawyers. We are currently evaluating federal district court judges sitting in Chicago. We found your name through a LEXIS search of Judge X's written opinions (or, in the case of off-the-list contacts, "X recommended that we speak with you"). Do you have a few moments to discuss Judge X with me?"

At the beginning of the call, the interviewer should establish the amount of knowledge that the attorney has about the judge; ask if the attorney and the judge have any personal relationship; and determine the number of times the attorney has appeared before the judge, the nature of the cases, and whether the attorney won or lost.

If the interviewee feels that he or she is not qualified to evaluate this judge, ask if there is another federal judge that he or she is more comfortable speaking about.

After greeting the interviewee, assure him or her that all information given is confidential; names are only used in order to keep track of who has been contacted (see below).

You are not limited to these questions; do not accept one-word answers and try to get as much information as you can.

1. **Legal Ability:** What is your opinion of the judge's legal ability? Is he or she a competent judge?
 - Does the judge have good communication skills?
 - Does the judge listen carefully?
 - Are the reasons for the judge's rulings clear?
 - Does the judge seem to be abreast of current developments in the law?
 - Does the judge make effective use of pretrial procedures?
 - Does the judge clearly explain courtroom procedures to the involved parties?
2. **Written Opinions:** Was there a written opinion in your case?
 - Was the opinion issued in a timely manner?
 - Was the opinion clearly written?
 - Was the opinion well written?
 - Did the opinion deal sufficiently with the issues presented in the case?
3. **Decisiveness:** Is the judge decisive? Does he or she make a decision and stick with it?

- Does the judge make a deadline and stick to it?
4. **Diligence:** Describe the judge's overall work ethic.
 - Is the judge always well-prepared?
 - Is the judge attentive to evidence and arguments?
 - Did the court session start on time?
 - Does the judge manage his or her schedule well?
 - Were there any delays? Why? Were they explained?
 - Are matters disposed of in a timely manner?
 5. **Integrity:** What is the judge's reputation for integrity?
 - What is the judge's personal conduct like?
 - Does the judge's conduct reflect positively on the bench?
 6. **Judicial Temperament:** How would you characterize the judge's temperament?
 - Is the judge even-tempered?
 - Is the judge courteous to all parties?
 - How does the judge treat pro se parties?
 - Does the judge deal well with stress and unexpected developments?
 7. **Fairness:** Is the judge be able to remain impartial it all times?
 - Does the judge treat all parties fairly, regardless of their race, gender, age, etc.?
 - Does the judge consciously act to reduce or eliminate words or conduct which manifest bias?
 - If there was inappropriate behavior on the part of anyone else, did the judge attempt to stop or correct it?
 - Does the judge remain neutral and impartial regarding all legal issues?
 - Does the judge remain neutral and impartial to all lawyers or parties?
 - Is the judge able to remain impartial at all times?
 - Were both sides given equal opportunity to present their case?
 8. **Respect for the Rule of Law:** Do the judge's rulings follow the law?
 9. **Independence from Political and Institutional Influences:** Is there any indication that the judge is susceptible to outside influences?
 - Is there any evidence of the judge's political leanings in his or her conduct or writings?

It is important that the investigator ask follow-up question in order to elicit useful information. If given a one-word response, ask "Can you explain that?" or "Can you provide an example of that?"

In some instances follow-up calls should be made in order to determine if negative reports of a serious nature have any validity.

CONFIDENTIALITY

Please keep in mind that the Council's evaluation process is confidential. Names of investigators will be used internally for record-keeping purposes but will not otherwise be disclosed. Similarly, any information gathered may become part of the Council's evaluation process, or may be used for further investigation of a judge, but any details that would reveal its source will be removed.

ABOUT THE COUNCIL

If you are asked what the Council is:

The Chicago Council of Lawyers is a public interest bar association founded in 1969 to address *inadequacies in the legal system. Focusing on the administration of justice, the Council strives to achieve effectiveness, accountability, and equity in the law.* The Council began evaluating state court and federal district court judges in 1970.

You may also direct the interested to our website at www.chicagocouncil.org

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

In re **IKO Roofing Shingle**
Products Liability Litigation

MDL Docket No. 2104

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2009, a copy of the foregoing document is being served on all counsel of record identified on the attached Panel Attorney Service List, and copies were sent to the following:

Clerk, United States District Court for the Western District of New York

Clerk, United States District Court for the District of New Jersey

Clerk, United States District Court for the Western District of Washington

Clerk, United States District Court for the Northern District of Illinois

Charles Schaffer
Arnold Levin
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street - Suite 500
Philadelphia, PA 19106-3697

Robert K. Shelquist
LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401

Charles J. LaDuca
Brendan Thompson
CUNEO GILBERT & LADUCA, LLP

Judicial Panel on Multidistrict Litigation - Panel Service List

Page 1

Docket: 2104 - IN RE: IKO Roofing Shingle Products Liability Litigation

Status: Pending on / /

Transferee District:

Judge:

Printed on 08/28/2009

ATTORNEY - FIRM

REPRESENTED PARTY(S)

Halunen, Clayton D.
HALUNEN & ASSOCIATES
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

=>Phone: (612) 605-4098 Fax: (612) 605-4099 Email: halunen@halunenlaw.com
Augustine, Michael*; Cantwil, James K.*; Czajka, Curtis*; Czuba, Gerald P.*; Hight, Michael*;
McNeil, Pamela D.*; Pelockis, Richard*; Trongone, Daniel*; Zanetti, Debra*

IKO Industries, Ltd.,
1 Yorkdale Road
Suite 602
Toronto, Ontario M6A 3A1

=>
IKO Industries, Ltd.

IKO Sales, Ltd.,
1 Yorkdale Road
Suite 602
Toronto, Ontario M6A 3A1

=>
IKO Sales, Ltd.

Murphy, Christopher M.
MCDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, IL 60606-5096

=>Phone: (312) 984-3607 Fax: (312) 984-7700 Email: cmurphy@mwe.com
IKO Chicago, Inc.*; IKO Manufacturing, Inc.*; IKO Pacific, Inc.*